

Distr.  
LIMITED

E/CN.4/1994/WG.6/1  
17 December 1993

ENGLISH  
Original: ENGLISH/SPANISH

COMMISSION ON HUMAN RIGHTS

Pre-sessional open-ended working group  
on a draft declaration on the right  
and responsibility of individuals,  
groups and organs of society to  
promote and protect universally  
recognized human rights and  
fundamental freedoms

Ninth session  
17-28 January 1994

COMMENTS ON THE FIRST READING TEXT

Report of the Secretary-General prepared pursuant to paragraph 3  
of Commission on Human Rights resolution 1993/92

CONTENTS

	<u>Page</u>
Introduction . . . . .	2
I. COMMENTS RECEIVED FROM GOVERNMENTS . . . . .	3
II. COMMENTS RECEIVED FROM SPECIALIZED AGENCIES AND INTERGOVERNMENTAL ORGANIZATIONS . . . . .	7
III. COMMENTS RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS . . . . .	8

### Introduction

1. At its forty-ninth session, the Commission on Human Rights, in resolution 1993/92, took note of the report of its open-ended working group on the drafting of a declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms (E/CN.4/1993/64) and urged the working group to make every effort to complete its task and submit the draft declaration to the Commission at its fiftieth session. The Secretary-General was requested to circulate the report of the working group, including the first reading text of the draft declaration, to the Governments of all States Members of the United Nations and members of competent specialized agencies, and to interested intergovernmental and non-governmental organizations, with an invitation to submit written comments on the first reading text (E/CN.4/1993/64, annex I) for consideration by the working group at its next session.

2. Pursuant to this request, a note verbale and a letter dated 23 September 1993 were sent by the Secretary-General to all Member States, to competent specialized agencies and to interested intergovernmental and non-governmental organizations, inviting them to submit their comments on the first reading text of the draft declaration.

3. By 14 December 1993, replies had been received from the Governments of Austria, Chile, Croatia, Jordan, Namibia and Saudi Arabia as well as from the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organization, the League of Arab States and the International Criminal Police Organization (Interpol). Communications had also been submitted by the following non-governmental organizations: Baha'i International Community, International Institute of Humanitarian Law and Inter-Parliamentary Union.

4. All substantive replies and comments so far received are summarized below. Additional replies, if any, will be published in an addendum to the present document.

5. The working group may wish to recall that at its eighth session, held from 18 to 29 January 1993, it had before it a report of the Secretary-General prepared pursuant to paragraph 5 of Commission resolution 1992/82 (E/CN.4/1993/WG.6/1) which contained summaries of substantive comments on the first reading text of the draft declaration submitted by the Governments of Australia, Cuba, the Czech and Slovak Federal Republic, Finland, Greece, Nigeria and Venezuela, as well as by the International Labour Organisation. Also included were comments received from Amnesty International, the Baha'i International Community and the International Union of Students.

## I. COMMENTS RECEIVED FROM GOVERNMENTS

## AUSTRIA

[Original: English]

[13 December 1993]

1. Austria is well aware of the necessity to address the responsibility of individuals, groups and organs of society to promote and protect human rights and fundamental freedoms and to address constant shortcomings in a number of Member States. Austria strongly supports the political signal that the international community expects Governments to adhere to standards and fulfil obligations allowing individuals and groups under their jurisdiction not to participate in committing human rights violations and to speak out against such abuses.
2. The text of the draft declaration in its present form, however, seems to be caught between the aims of setting out fundamental principles of conduct, directed especially at authoritarian regimes - an aim served by using political as well as legal language in the text - and of simultaneously addressing States with a highly developed liberal-democratic constitutional order, thereby making it difficult to "fit" the political language into the structures of the legal system.
3. In Austria's view, the text of the declaration should include both a statement on the objective of the declaration as such, as well as a definition of the human rights and fundamental freedoms to be protected, preferably by referring to international legal instruments. Furthermore, some standards of relevance for the implementation of the declaration remain vague (e.g. the term "just decision" in chapter IV, art. 2 (d) remains meaningless without a more precise definition of its contents). Other provisions of the declaration simply contradict the methodology of a functioning system of legal protection, such as the provision of a public hearing on the demand of a third party (as foreseen in chapter IV, art. 2 (b)).
4. Austria believes that the legal wording of the draft declaration should be scrutinized for elements of vagueness during further discussions within the working group, thereby taking care that political demands do not exceed the legal protection standards in societies with democratic pluralism. To this end, work should concentrate on clear definitions of standards of public behaviour necessary to secure the exercise of the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms.
5. In view of these considerations, Austria reserves its right to present a more detailed conference room paper to the next meeting of the working group scheduled for 17-28 January 1994.

CHILE

[Original: Spanish]  
[22 November 1993]

1. Deletion of references to specific rights targeted by individuals, groups and organs of society active in the defence of human rights

There is no point in specifying rights to be defended as that would involve conferring a status on them in an arbitrary manner and also because it would not be possible to find a formula satisfactory to all countries. Chile accordingly proposes:

That the proposal by Germany to shorten the fifth preambular paragraph should be supported;

That article 2 of chapter III should be amended, by deleting the reference to the right to participation in the Government of his country, as it is not necessary in establishing the "right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work which may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms."

2. Deletion of references implicitly indicating that human rights may be violated by individuals or groups, thereby disregarding the intrinsically institutional nature of the respect for or the violation of human rights

This would involve a serious distortion and misrepresentation of the very concept of human rights, which would undermine the foundations on which the international system for the protection of human rights is established. Chile accordingly proposes:

The deletion from article 3 of chapter III of the words "groups or persons" after "by the State".

The deletion of article 4 from Chapter IV since it can be misinterpreted in the sense indicated above.

3. Deletion of references which may mean violations of the right to freedom of conscience, thought and expression

Chile accordingly proposes:

The deletion from the second paragraph of article 2 of chapter V of the phrase "and have respect for the culture of the whole community and the cultures within the community". Even though this is followed by the words "consistent with human rights and fundamental freedoms", the phrase could be construed as legitimizing measures to impose an alien culture on minority groups or persons in a given society.

4. Stipulation that in order to promote and protect human rights and fundamental freedoms, the body of human rights formulated by the international community should be recognized by everyone individually or in association with others

Chile accordingly proposes:

The insertion of a subparagraph (d) in article 1 of chapter III, to read:

"to enjoy the body of human rights recognized by the international community."

CROATIA

[Original: English]  
[17 November 1993]

The fifth paragraph of the preamble to the draft declaration - which acknowledges the important role of international cooperation for the elimination of flagrant violations of human rights and fundamental freedoms, such as those resulting from apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation - should be amended with the words "war crimes and crimes against humanity, especially genocide and ethnic cleansing".

NAMIBIA

[Original: English]  
[15 November 1993]

#### Chapter I

##### Article 1 (chapter I et seq.)

It is important to stress the two key words, i.e. "universally recognized", so as to highlight the fact that there are certain basic rights and freedoms which know no national boundaries and which, therefore, cannot be whittled away in any society but must be protected at all times. So the words "universally recognized" should not be bracketed.

#### Chapter II

##### Article 3

It is by comparing the human rights and freedoms that are enjoyed in other countries that one is able to form a better opinion as to the content of the rights and freedoms one enjoys in one's own country, and whether the means available for their protection and promotion are adequate in one's own country. For this reason, it may be necessary to remove the brackets in the last two lines so as to also emphasize the universality and the international character of human rights and freedoms.

Article 5

Because of the situation existing in most developing countries, it is proposed that the following be inserted between "publication" and "and" in line 1, paragraph (a) of sub-article 2: ", in the official languages and other widely spoken languages of the territory,"

Chapter III

Article 4

The words in brackets, i.e. "is entitled", are preferred because they seek to reinforce the possession of an inherent right.

Chapter IV

The following words are proposed to be inserted between "bodies" and the semicolon ";" in the last line of paragraph (a): "whose jurisdiction one's country has accepted".

Chapter V

Article 3

It is proposed that the following words should be placed before "applicable" in the last line, so as to emphasize the importance of general international law in the protection of human rights: "general international law and".

SAUDI ARABIA

[Original: English]  
[8 November 1993]

The subject matter of this communication is adequately and justly declared, practised and enforced by the Government and citizens of Saudi Arabia which consider that Islam has a universality of legislative and other prerequisites regarding the responsibility of individuals, groups and organs of society to observe, promote and protect human rights and fundamental freedoms in accordance with Islamic jurisprudence. The Islamic faith has adherents comprising well over a quarter of the human race. Any communication which is intended to blemish our faith will be rejected and ignored.

II. COMMENTS RECEIVED FROM SPECIALIZED AGENCIES AND  
INTERGOVERNMENTAL ORGANIZATIONS

INTERNATIONAL LABOUR ORGANISATION

[Original: English]  
[27 October 1993]

The International Labour Organisation (ILO) referred to its earlier comments submitted in September 1992\*, which remain valid and which, in the opinion of ILO, have not so far been considered by the working group. ILO therefore requested that those comments be brought to the working group's attention at its ninth session. ILO stated that it was concerned, as always, to ensure compatibility of drafting and of interpretation between international standards, as stated in its earlier comments.

UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

[Original: English]  
[10 December 1993]

1. Concerning chapter II, article 5, paragraph 3, a broader formulation is suggested which would take into account the non-formal aspect of education for human rights. Instead of "The State has the responsibility to promote and improve the teaching of human rights and fundamental freedoms at all levels of education ...", the formulation could be: "The State has the responsibility to promote and improve formal and non-formal education on human rights and fundamental freedoms at all levels ...".

2. Regarding the second part of this paragraph, the phrase could read: "... The personnel of the armed forces, of the police and security, and of prisons, public officials, media personnel, health professionals and scientists including those engaged in biological research." The underlined professional categories were mentioned in the World Plan of Action on Education for Human Rights and Democracy because of their responsibilities in the field of human rights.

3. The World Plan of Action on Education for Human Rights and Democracy, adopted at the International Congress on Education for Human Rights and Democracy (Montreal, Canada, March 1993), notes that the early adoption of the United Nations draft declaration relating to the right and responsibilities of individuals and organs of society to promote and protect human rights would be a major contribution to the implementation of this aspect (education for human rights and democracy in specific contexts and difficult situations) of the Plan of Action.

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\* E/CN.4/1993/WG.6/1, paras. 21, 58, 71, 82, 85 and 92.

LEAGUE OF ARAB STATES

[Original: Arabic]  
[9 November 1993]

1. The League of Arab States wishes to express its satisfaction at the extremely important topics covered by the declaration, such as the fundamental freedoms of individuals and groups, their right to engage in peaceful activities to express their rights, the appeal to States to respect and promote fundamental freedoms, to promote the teaching of human rights at all educational levels and among lawyers and members of the armed forces and the police and to hold training courses on human rights for them, as well as the right to disseminate and express political or ideological opinions and reject all forms of discrimination on grounds of sex, colour, religion or ideology, and the appeal to Governments to promote and protect human rights at the administrative and legislative levels and to endeavour to abrogate national legislation that is incompatible with human rights and fundamental freedoms.

2. However, the League believes that reference to the need to refrain from using human rights as a pretext for interference in the internal affairs of States, as well as an affirmation of the right of peoples to development and self-determination and mention of the rights of minorities and indigenous populations, would endow the draft with the requisite degree of comprehensiveness and full significance and would facilitate the international consensus needed for its adoption and implementation by States.

III. COMMENTS RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS

BAHA'I INTERNATIONAL COMMUNITY

[Original: English]  
[2 December 1993]

1. The Baha'i International Community is pleased that agreement has been reached on many provisions of the draft declaration, particularly those that permit - and, indeed, encourage - individuals, groups and organs of society to promote the human rights of others. Certainly, the effective implementation of existing human rights standards requires vigilance on the part of all members of society, the freedom to speak out against abuses and the willingness to do so.

2. At the same time, the Community notes that agreement has not yet been reached on all provisions of draft article 5 of chapter V which addresses the relationship between rights and responsibilities, particularly the extent to which the declaration should recognize responsibilities. As discussed at some length in its submission last year\*, the Baha'i International Community believes that rights and responsibilities are inextricably linked. It therefore offers for the consideration of the working group some further

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\* E/CN.4/1993/WG.6/1, paras. 93-96.



comments on the importance of addressing in the final document the role of individuals, groups, institutions and non-governmental organizations in ensuring respect for universal human rights.

#### Recognition of the oneness of humankind as a basis for human rights

3. World unity requires universal respect for human rights. The basis for a commitment to human rights is recognition of the oneness of humanity, for it requires abandonment of prejudice of every kind - race, class, colour, creed, nation, sex, degree of material civilization - everything which enables people to consider themselves superior to others. To accept the oneness of humanity is to embrace the variations that characterize human society, and to desire for every individual the opportunity to develop and express his or her unique capacities and inherent talents.

4. Recognition of the oneness of humanity gives rise to an elevated concept of human rights, one that includes the assurance of dignity for each person and the realization of each individual's innate potential. This view differs markedly from an approach to human rights that is limited to preventing interference with the individual's freedom of action.

#### Importance of the right to promote the rights of others

5. If, as in the Baha'i perspective, the realization of human rights involves promoting human dignity, then it becomes apparent that Governments alone cannot implement human rights. Legal protections for human rights and freedom from government oppression are unquestionably essential to human dignity. But dignity is fostered fundamentally by the way one is treated by others.

6. This, then, is the critical contribution that the draft declaration can make to the human rights debate: it recognizes that the right to help others, to defend the sanctity of their persons, and to promote their fundamental dignity as members of a global community is one of the most important of all rights. It is essential to the effective implementation of all other universally recognized human rights.

#### Importance of the responsibility to promote the rights of others

7. The Community believes it is impossible to implement human "rights" without a sense of collective responsibility. Indeed, if the whole of humanity is one interconnected body, then an injury to any member is an injury to the body as a whole. Thus, it behooves every individual member of the human family to take action whenever and wherever human rights violations occur.

8. Some links between human rights and responsibilities are already generally accepted. Legal rights guaranteed by the existing human rights instruments are implicitly balanced by responsibilities, and States are obligated to respect human rights under international law. Likewise, the notion of responsibility is widely acknowledged in its narrow criminal and tort law sense. In the Baha'i perspective, the concept of "responsibility" in the context of human rights encompasses the responsibility devolving upon

every person, as a divinely created being, to recognize the essential oneness of the human race and to promote the human rights of others with this motivation.

9. Thus, it seems essential to broaden the conceptual framework for addressing human rights problems from an adversarial paradigm - pitting the Government against the individual citizen - to a cooperative one, where we consider relations among all human beings as members of one community. In this context, everyone has an essential role to play in implementing fundamental human rights. When individuals assume responsibility for ensuring each other's human rights the foundation for unity will be firmly established.

10. In addition, recognition of such a responsibility to promote human rights can empower ordinary people and give them a new sense of purpose and dignity. As stated in the Baha'i writings:

"And the honour and distinction of the individual consist in this, that he among all the world's multitudes should become a source of social good. Is any larger bounty conceivable than this, than an individual, looking within himself, should find that by the confirming grace of God he has become the cause of peace and well-being, of happiness and advantage to his fellow men? No, by the one true God, there is no greater bliss, no more complete delight." ('Abdu'l-Baha, THE SECRET OF DIVINE CIVILIZATION, pp. 2-3).

Specific suggestions relating to article 5 of the draft declaration

11. The Baha'i International Community believes that the recognition that the draft declaration is the appropriate document in which to acknowledge the responsibility of every human being to promote the human rights of others would represent a major advance in the cause of human rights. A recognition of responsibilities in this context need not conflict with the right of each individual to promote and protect human rights and freedoms. Rather, it would encourage and empower all people, not just Governments, to become active participants in implementing established international human rights standards.

12. In this connection, the Community welcomes the working group's preliminary agreement on paragraphs 1, 2 and 3 of article 5, which acknowledge the important responsibilities of individuals, groups, institutions and non-governmental organizations to promote the rights of others. It is suggested that the ideas expressed in these paragraphs be retained in the final text of the draft declaration and that, if possible, the concept of responsibilities be further elaborated along the lines discussed.

## INTER-PARLIAMENTARY UNION

[Original: English]

[18 October 1993]

1. The Inter-Parliamentary Union expressed regret that the draft declaration does not make any specific reference to action by Parliaments and parliamentarians who, indeed, have a key role to play to ensure that the public may effectively contribute to the promotion and respect of human rights and fundamental freedoms.
2. Along these lines, in a resolution\* entitled "The implementation of educational and cultural policies designed to foster greater respect for democratic values", the 89th Inter-Parliamentary Conference (New Delhi, April 1993) called on "all Parliaments and Governments to ensure that citizens are aware of their democratic rights, their responsibilities and the need to participate in the democratic process, and to enable them to do so" (para. 2). The Conference further stated that "education programmes must aim to instil in students the principles of democratic life and its foundations; knowledge of the institutions of their country and of man's rights and responsibilities in today's world; the ability to reflect on the conditions for and the means of promoting respect for these rights and responsibilities; a capacity for personal reflection and critical analysis; and respect, tolerance and understanding of others". The attention of the working group is also drawn to paragraphs 4, 6 and 10 of the resolution.
3. With reference more especially to chapter II, article 2 (b) and (c), chapter IV, article 3 (b) and chapter V, article 2, of the draft declaration, the attention of the working group is specifically drawn to paragraphs 3, 5, 6, 9 and 10 of the resolution entitled "Results and follow-up of the Inter-Parliamentary Symposium on 'Parliament: Guardian of Human Rights'". These provisions are based on a summary of the discussions held during the Symposium which could also usefully be brought to the attention of the working group as it covers a number of other issues, some of which are referred to in the draft declaration.

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\* Available for consultation in the files of the Secretariat.